

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3375 OF 1990

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

-----  
1. Whether reporters of local papers may be allowed  
to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy

JJJJJJJJJJJJJJJJJJ

4. Whether this case involves a substantial question  
of law as to the interpretation of the  
Constitution of India, 1950, or any order made  
thereunder ?

5. Whether it is to be circulated to the Civil  
Judge?

-----  
B.K. BAMBHANIYA & ORS.

VERSUS

UNA TALUKA SAHAKARI KHAND UDHYOG MANDLI LTD.

-----  
Appearance:

MR AD MITHANI for the Petitioner

MR ND NANAVATI for the Respondent

-----  
Coram: S.K. Keshote,J

Date of decision:19/6/97

## C.A.V. JUDGMENT

The facts of the case, in brief, are that the petitioners were engaged by the respondent in the year 1977. The services of the petitioners, alongwith ten other employees were terminated under the oral order dated 20th February 1980. This termination was considered to be bad and illegal by the petitioners and ten others and as such a joint application being B.I.R. Application No.32 of 1980 has been preferred by them before the Labour Court. This application came to be dismissed under the order dated 3.4.82 by the Labour Court. That order of the Labour Court dated 3rd April 1982 has been challenged by ten other employees by filing an Appeal (IC) No.27/92, and 1/93 to 9/93. The appeals aforesaid were accepted by the Industrial Court and termination of the appellants therein was declared to be illegal and arbitrary and necessary relief has been granted in their favour. The petitioners have not filed appeal against the order of the Labour Court dated 3.4.82 and they have given out the reasons that because of illness of Shri Rasikbhai Mehta, Joint Secretary of the Union, appeal could not be filed. The petitioners have come up with the case that their case is identical to those ten persons whose case has been decided by the Industrial Tribunal. The order of the Industrial Tribunal dated 13th September 1983 made in the ten appeals of the other employees has been challenged by the respondent before this Court by preferring Special Civil Application No.817 of 1984.

2. Reference has been made by the petitioners to the Resolution of the respondent dated 6.11.89. The four employees named therein were neither made permanent nor they were given work and hence these four employees have preferred Civil Application No.1958 of 1989 before this Court. In the Civil Application, on 26th October 1989, this Court has directed the respondent to continue those employees on their original post with full backwages till the decision in Special Civil Application No.817 of 1989. So far as the other employees are concerned, they were not only made permanent, but they were also being paid wages in case of non availability of work. The four employees were ordered to be paid backwages as per the order of this Court dated 26.10.89. The petitioners claim same benefits before this Court. The prayer is that the Award of the Industrial Tribunal in the appeals should be considered as the Award for all thirteen employees, i.e. ten employees who have preferred the appeals and the three petitioners.

3. This Special Civil Application is opposed by the respondent. The learned counsel for the petitioners contended that the case of the petitioners is identical to the case of ten persons in whose favour the Award has been made by the Industrial Tribunal in the appeal filed by them. The petitioners and ten persons have approached to the Labour Court and their cases were dismissed, but the petitioners, for the reasons stated in the Special Civil Application, could not prefer the appeals. The ten persons preferred the appeals and in their cases, relief has been granted. Merely on the ground that the petitioners have not preferred their appeals, though their case is identical to the case of those ten persons, the respondent should not have made any discrimination. It has further been contended that the order of the Industrial Tribunal has been confirmed by this Court as the Special Civil Application No.817 of 1984 filed by the respondent has already been dismissed by this Court on 13th September 1996 and as such, same reliefs should be given to the petitioners also. In view of this fact, the petitioners deserve same relief which has been given to ten employees.

4. On the other hand, the learned counsel for the respondent contended that the petitioners have not challenged the order of the Labour Court which has attained finality and as such, they cannot get any benefit of the order of the Industrial Tribunal. The order is only in favour of the ten employees and those ten employees have been given the benefit of the order. It is a matter where the petitioners have not challenged the order made by the Labour Court against them and which order has attained finality. The reasons given by the petitioners of not preferring the appeal against the order of the Labour Court are not cogent and justified.

5. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

6. The petitioners have challenged their termination by filing the application before the Labour Court under the provisions of the Bombay Industrial Relations Act, 1946. That application has been rejected by the Labour Court under its order dated 3.4.82 and the petitioners have not preferred any appeal against that order, which has therefore attained finality. The reasons given by the petitioners for non filing of appeal are not satisfactory. Individual appeals could have been filed by the employees and even if Shri Rasik Mehta was suffering from Cancer and later on he died on 18.5.89,

how it has any concern with the filing of the appeals by petitioners against the order of the Labour Court dated 3.4.82. The order has been made on 3.4.82 whereas Shri Rasik Mehta was suffering from Cancer since 1983. So, that person has got ailment much after the passing of the order by the Labour Court. In case the petitioners would have been really aggrieved of the order of the Labour Court dated 3.4.82, they would have filed appeals, as it has been done by other persons. The writ petition has been filed by the petitioners in the year 1990 before this Court, i.e. after about eight years of the decision of the Labour Court. This petition suffers from delay and laches and the explanation furnished by the petitioners is hardly of any substance and devoid of any merits. Otherwise also, the petitioners have right of appeal against the order dated 3.4.83 and they allowed that right of appeal to become barred by time, and thereafter they have filed this Special Civil Application before this Court. The matter would have been different where the petitioners would have come before this Court within the limitation prescribed for filing of appeal. The appeal itself has been decided by the Industrial Tribunal on 13th September 1983, but thereafter the petitioners have remained silent for all these years and they have filed this Special Civil Application only in the year 1990. This conduct of the petitioners disentitle them from grant of any relief from this Court sitting under Article 226 of the Constitution of India. A litigant who is not vigilant about his rights deserves no sympathy also before this Court. The persons who are vigilant of their rights and who avail that right by way of appeal or otherwise, cannot be equated with the persons who are not vigilant for their rights. Even if it is taken that the case of the petitioners and other ten persons are identical, the fact remains that those persons have filed appeals and under the order of Industrial Tribunal, they have been initiated back in services. Those persons have filed individual appeals and as the decision came in their favour, they were given the benefit thereof. The petitioners cannot be given the same benefits only on the ground that at one point of time, before the original authority, they have filed a joint application. The net result of the aforesaid discussion is that the petitioners cannot be granted any relief as prayed for by them in the Special Civil Application.

7. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

.....

(s)